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EVENFLO COMPANY, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MATTHEW R. LINDNER, et al.,

Plaintiffs,

vs.

FORD MOTOR COMPANY, et al.,

Defendants.

Case No. : 2-10-CV-0051-LDG-LRL

**DEFENDANT EVENFLO COMPANY,
INC.'S MEMORANDUM IN RESPONSE
TO PLAINTIFF'S OBJECTIONS TO
EXHIBIT 502 [DOC. 175]**

MEMORANDUM OF POINTS AND AUTHORITIES

In connection with its objection to certain demonstrative exhibits and other exhibits listed on Evenflo's Final Trial Exhibit List filed on September 30, 2015 [Doc. No. 158], Plaintiff incorrectly characterizes the exhibits as an attempt by Evenflo to offer undisclosed expert opinions and has filed a motion to exclude use of the exhibits by Evenflo at trial. [See Plaintiff's Objections to Defendant's Trial Exhibits and Motion to Exclude Undisclosed Additional Expert Opinions, Doc. Nos. 175-185 ("Plaintiff's Objection")]. For the reasons set forth below, Plaintiff's motion must be denied. The motion also is premature in multiple respects.

Plaintiff's Objection [Doc. No. 175] was original improperly filed as it contained multiple separate arguments in one document. Plaintiff thereafter corrected his error by refiling the same motion with separate headings. Defendant has responded to all arguments in one motion – Defendant Evenflo Company, Inc.'s Memorandum in Opposition to Plaintiff's Objection to Exhibits and Motion to Exclude Undisclosed Expert Opinions [Doc. No. 189]. Defendant further breaks its arguments into separate arguments related only to a specific exhibit for ease of the Court in working through the documents and to set forth a clear docket.

Response to Plaintiff's Objection to Exhibit 502

Evenflo exhibit 502 is an e-mail from Plaintiff's counsel Larry Lawrence to Plaintiff's car seat expert, Arthur Hoffman, dated March 7, 2011, in which Mr. Lawrence remarkably told Mr. Hoffman what his theory should be in the case. This e-mail was voluntarily produced by Plaintiffs in the litigation, and was used by counsel for Evenflo at the deposition of Mr. Hoffman in April 2011, Plaintiff raised no objections or at any time in the ensuing four years. **See Exhibit 2, selected portions of Dr. Hoffman's deposition testimony.**



1 The parties filed their motions *in limine* in June of this year, Plaintiffs' motion *in limine*
 2 No. 26 sought to preclude use of "Expert & Attorney Work Product and Communications." [Doc.
 3 No. 119]. In response to Plaintiff's motion, Evenflo specifically addressed the e-mail from Mr.
 4 Lawrence to Mr. Hoffman, which had been listed by Evenflo on its June 12, 2015 exhibit list. See
 5 **Exhibit 1**. Although this issue was fully briefed and ripe for a determination by the Court at the
 6 motion *in limine* hearing, Plaintiffs withdrew their motion *in limine* on the day of the hearing. See
 7 **Exhibit 3, selected portions of hearing transcript from July 7, 2015.**
 8

9 After the withdrawal of their motion *in limine*, Plaintiff never subsequently objected to the
 10 use of the e-mail until they filed their objections to Evenflo's exhibits yesterday. This issue has
 11 been fully briefed in connection with Plaintiff's Motion in Limine No. 26.
 12

13 DATED this 5th Day of October, 2015.
 14

15 /s/ Rosemary Missisian
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*Attorneys for Defendant
EVENFLO COMPANY, INC.*

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2015, a true and correct copy of the foregoing **DEFENDANT EVENFLO COMPANY, INC.'S MEMORANDUM IN RESPONSE TO PLAINTIFF'S OBJECTIONS TO EXHIBIT 502 [DOC. 175]** was served by operation of the Court's electronic filing system on the following counsel of record:

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